

Application No. 09/869,635
Amendment dated April 2, 2003
Reply to Office action of October 2, 2002

REMARKS

Claim Rejections under 35 USC 112

Claims 9 and 13 have been amended to conform with the Examiner's observations under 35 USC 112. Claim 14 has been cancelled.

Claim Rejections under 35 USC 102

Claim 9 has been rejected under 35 USC 102(b) as being anticipated by Philipps et al. (U.S. Patent No. 4,510,117). Contrary to the Examiner's assertion, Philipps does not teach every limitation of Applicant's claim 9. For example, claim 9 contains the following element: "means of placing, (6, 9), the casing in a given position on at least one of the cells, (5), adjoining a cell containing the nuclear fuel, (26)." Philipps does not teach, *inter alia*, this limitation. Therefore, because Philipps does not teach every limitation of Applicant's claim 9, it is submitted that Philipps does not anticipate Applicant's claim 9. It is submitted that the rejection of claim 9 is hereby overcome. Applicants therefore respectfully request that the rejection of claim 9 be withdrawn.

Claim Rejections under 35 USC 103

Claim 10 has been rejected under 35 USC 103 as being unpatentable over Philipps et al. ('177) in view of Philipps et al. (1975). Because it is believed that claim 9 is allowable, it is also believed that claim 10, which depends from claim 9, is also allowable. It is respectfully submitted that the rejection of claim 10 is hereby overcome. Applicants therefore respectfully request that the rejection of claim 10 be withdrawn.

Claims 13, 15 and 16 have also been rejected under 35 USC 103 as being unpatentable over Philipps et al. ('177) in view of Philipps et al. (1975). Applicants submit that claims 13, 15 and 16 are not rendered obvious by the combined teachings of

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Philipps et al. ('177) and Philipps et al. (1975) because, *inter alia*, the two references, either alone or in combination, fail to teach every element of Applicants' claims 13, 15 and 16. First, claim 13 recites as an element, "means for positioning the device on at least one of the cells which is adjacent another cell in which the nuclear fuel is contained." Neither Philipps et al. ('177) nor Philipps et al. (1975) teach or suggest this element. Second, claim 13 recites as an element, "and a shield of the second radiation which is contained in the casing, the shield comprising a thinner part in front of the first detector and a thicker part in front of the second detector and above the first detector." Neither Philipps et al. ('177) nor Philipps et al. (1975) teach or suggest this element. This element is clearly absent from the '177 patent. However, the Examiner has asserted with reference to the Philipps et al. (1975) reference, "The lead shield of the GeLi detector comprises a thinner part in front of the NaI detectors, thicker in front of said GeLi detector. Also, the lead shield above the GeLi detector is thicker than above the NaI detector." To the contrary, this assertion is not supported by any disclosure, textual or pictorial, in the Philipps et al. (1975) reference. Respectfully, the Examiner's assertion is unsubstantiated and incorrect. Therefore, because the asserted references do not, either each alone or in combination, teach or suggest every element of claim 13, it is respectfully submitted that the rejection of claim 13 has been overcome. Withdrawal of the rejection of claim 13 is respectfully requested. Further, because claims 15 and 16 depend from claim 13, is also submitted that the rejection of claims 15 and 16 has been overcome. Withdrawal of the rejection of claims 15 and 16 is also respectfully requested.

Additionally, Applicants have responded to the 35 USC 103 rejection despite the fact that the Examiner has failed to establish a *prima facie* case of obviousness. As required by MPEP 706.02(j), to establish a *prima facie* case of obviousness, the Examiner must explain why one of ordinary skill in the art at the time the invention was made would have been motivated to make the proposed modification. The Examiner's assertions fall short of the requirement that there must be some suggestion or motivation to modify the references or combine the teachings. Because the Examiner has not

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demonstrated why one of ordinary skill in the art would have been motivated to make the proposed modification, no prima facie case of obviousness has been established. Because no prima facie case of obviousness has been established regarding claims 13, 15 and 16, it is submitted that the rejection of claims 13, 15 and 16 is improper. Accordingly, it is respectfully requested that the rejection of claims 13, 15 and 16 be withdrawn.

Applicants have amended claims 9, 10, 13, 15 and 16 so that the claims may more clearly define Applicants' invention and so that the claims may maintain proper dependency.


It is respectfully requested that all pending claims are in a condition for allowance. Allowance of the pending claims is respectfully requested.

The Examiner is invited to telephone Applicants' representative to discuss any matters further.

If any additional fees are required by this communication, please charge such fees to our Deposit Account No. 16-0820, Order No. 33774.

Respectfully submitted,

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